

## **REMARKS**

Applicant is in receipt of the Office Action mailed July 24, 2003. Claims 1 – 24 were pending in the present application. Applicant has amended claim 1. Claims 1 – 24 remain pending in the application.

### **35 U.S.C. § 112 Rejections**

Claim 1 stood rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 1 recited the limitation “said second client,” and lacked sufficient antecedent basis for this limitation in the claim. Applicant has corrected the limitation to read “said first client.”

### **35 U.S.C. § 102(b) Rejections**

Claims 1, 2, 4, 7, 8, 10, and 14 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over Kenner et al. (U.S. Patent No. 6,154,744, hereinafter “Kenner”).

The Examiner asserts that Kenner teaches a server, a first client coupled to said server wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently; wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server, wherein said first client is configured to store a first latency value associated with said first access, wherein said second client is configured to store a second latency value associated with said second access. Applicant respectfully disagrees with the Examiner’s characterization of Kenner.

Kenner teaches a system and method for the optimized storage and retrieval of video data at distributed sites, and that generalized network performance data is collected and stored to facilitate the selection of additional delivery sites. (Abstract) Specifically, Kenner teaches a system with a

plurality of user terminals operable to download content from content providers or mirror sites (col. 7, lines 3 – 32 and Fig. 1) and that a variety of test types may be used to provide useful data, including but not limited to a ping test, traceroute test, throughput test and macroscopic network analysis. (col. 9, line 58 – col. 11, line 23)

Applicant's amended claim 1 recites in pertinent part:

wherein said server is configured to login a first user and a second user, wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently, wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server, wherein said first client is configured to store a first latency value associated with said first access, and wherein said first client is configured to store a second latency value associated with said second access.

Applicant can find no language in Kenner that teaches or suggests a system “**wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently,**” as recited in Applicant's amended claim 1.

Furthermore, Applicant can find no language in Kenner that teaches or suggests a system “**wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server,**” as recited in Applicant's amended claim 1.

Accordingly, claim 1 along with its dependent claims 2 – 14 are believed to patentably distinguish over the cited reference for at least the reasons given above.

Claim 15 recites similar features to claim 1, and is likewise believed to patentably distinguish over the cited reference, along with dependent claims 16 – 24 for at least the same reasons.

**CONCLUSION**

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 50-1505/5181-50200/BNK.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Noël Kivlin", with a long horizontal line extending to the right.

B. Noël Kivlin  
Reg. No. 33,929  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert and Goetzel, P.C.  
P.O. Box 398  
Austin, Texas 78767-0398  
Phone: (512) 853-8800  
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